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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 JOSE CHAVEZ-RIVERA,

12 Petitioner,

13 vs.

14 UNITED STATES OF AMERICA,

15 Respondent.
16

11CR5407-LAB/

CASE NO. 14-CV-1353-LAB

**ORDER DENYING FEDERAL
HABEAS PETITION**

17 On December 29, 2011, Chavez-Rivera pleaded guilty to being a deported alien found
18 in the United States, a violation of 8 U.S.C. § 1326. See Case No. 11-CR-5407, Doc. Nos.
19 19–22. On February 27, 2012, the Court sentenced him to 48 months in prison, and
20 judgment was entered on March 1, 2012. *Id.* at Doc. No. 29. Over two years later, on June
21 2, 2014, Chavez-Rivera filed the present action—a federal habeas petition seeking to vacate
22 his conviction and sentence under 28 U.S.C. § 2255. The motion is **DENIED**.

23 Chavez-Rivera’s petition is light on argument, but he claims there is federal law that
24 would allow him to apply for citizenship and that would lead to his charge of illegal reentry
25 being “corrected.” (Pet. at 9.) Aware that his judgment of conviction was finalized well over
26 two years ago, he says “I have only just learned of this Federal Law and I wish to exercise
27 it at this time.” (Pet. at 12.) He doesn’t identify this federal law, nor does he say when it took
28 effect, so it’s not clear if the law is truly new or simply new to Chavez-Rivera.

1 In any event, Chavez-Rivera's petition is plainly untimely and barred by the statute of
2 limitations. He had one year from the date his conviction became final to file the petition.
3 28 U.S.C. §2255(f)(1). And because he didn't appeal his conviction it became final just
4 fourteen days after judgment was entered, when the time for filing a notice of appeal expired.
5 See *Randle v. Crawford*, 604 F.3d 1047, 1058 (9th Cir. 2010). His petition was therefore
6 due by no later than March 15, 2013, and he filed it in June, 2014. It is no excuse to invoke
7 § 2255(f)(4) and the exercise of "due diligence" to delay the starting date of the limitations
8 period, because among other reasons § 2255(f)(4) "is directed at the discovery of new facts,
9 not newly-discovered law." See *Phillips v. United States*, 734 F.3d 573, 580 (6th Cir. 2013).
10 See also *Harper v. United States*, 2012 WL 32920 at *3 (M.D. Pa. Jan. 6, 2012). Moreover,
11 there is absolutely no authority for Chavez-Rivera's idea that habeas relief is available to
12 someone who was fairly and finally convicted of an immigration offense yet now maintains
13 that he has discovered a route to United States citizenship. That certainly isn't
14 encompassed in the bases for relief articulated in the federal habeas statute. See 28 U.S.C.
15 § 2255(a).

16 Wholly apart from the timeliness and merits of Chavez-Rivera's petition, in his plea
17 agreement with the United States he waived his right to collaterally attack his conviction and
18 sentence, except for a post-conviction collateral attack alleging ineffective assistance of
19 counsel. See Case No. 11-CR-5407, Doc. No. 22 at 10. This waiver is valid and subject
20 to strict enforcement, and it certainly encompasses his present claim that he is actually
21 entitled to become a United States citizen and have his conviction for illegal reentry wiped
22 out. See *United States v. Ramirez-Cardinez*, 2014 WL 1329759 at *1 (E.D. Cal. Apr. 1,
23 2014) (citing *United States v. Navarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990); *United*
24 *States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993)). The plea agreement specifies that

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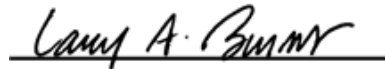
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1 Chavez-Rivera is a Mexican citizen and “has never been a citizen or national of the United
2 States.” Case No. 11-CR-5407, Doc. No. 22 at 3. On this concession alone, his habeas
3 petition is a non-starter.

4 Chavez-Rivera’s motion to vacate his conviction and sentence under 28 U.S.C.
5 § 2255 is **DENIED**. Not only is it time-barred, but the specific claim that Chavez-Rivera
6 advances was waived under his plea agreement and is meritless under the law. The Court
7 further **DENIES** Chavez-Rivera a certificate of appealability. See *Miller-El v. Cockrell*, 537
8 U.S. 322, 327 (2003).

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10 **IT IS SO ORDERED.**

11 DATED: July 1, 2014

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13 **HONORABLE LARRY ALAN BURNS**
14 United States District Judge
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